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Angela Beddawi

Applicant : Mark Skiba, et al.  
Application No. : 10/027,700  
Filed : December 20, 2001  
Title : SYSTEMS AND METHODS FOR ELECTRONIC  
DATA STORAGE MANAGEMENT

Confirmation No. 4165

Grp./Div. : 2186  
Examiner : Tuan V. Thai

Docket No. : 47612/G319

SUBMISSION OF APPELLANT'S REVISED BRIEF  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Post Office Box 7068  
Pasadena, CA 91109-7068  
May 31, 2007

Commissioner:


Responsive to the *Notification of Non-Compliant Appeal Brief* mailed May 1, 2007, enclosed for filing is Appellant's **twice revised** Brief for this application.

The fee for the appeal brief was mailed to the PTO on June 23, 2006 with the Appellant's Brief.

The Commissioner is hereby authorized to charge any further fees under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 03-1728. Please show our docket number with any charge or credit to our Deposit Account. **A copy of this letter is enclosed.**

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By   
LeRoy T. Rahn  
Reg. No. 20,356  
626/795-9900


LTR/amb



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**APPELLANT'S BRIEF (TWICE REVISED)**

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Commissioner:

Appellants Mark Skiba et al appeal from the final rejection of claims 9-13

**1. REAL PARTY IN INTEREST**

The real party in interest is Storactive Corporation, whose assets were recently acquired by Atempo, Inc.

**2. RELATED APPEALS AND INTERFERENCES**

None. However, applicant filed a Pre-Appeal Brief Request for Review. The panel's decision appears below in the **RELATED PROCEEDING APPENDIX**

**3. STATUS OF CLAIMS**

Claims 9-13 are pending in the case and are subject to this appeal. These claims appear in an Appendix hereto.. Claims 1-8 have been withdrawn and 14-21 have been cancelled.

**4. STATUS OF AMENDMENTS**

Claims 20 and 21 were cancelled after the final rejection.

**5. SUMMARY OF CLAIMED SUBJECT MATTER**

As described on page 25, lines 26-28 and page 28, lines 25-31 of the application, a copy of a file being backed up or changed is temporarily stored. This is called "mirroring". As described on page 25, lines 28-33 and page 28, lines 25-26, the differences (changes) in the backed up file are stored. This is called "versioning". Mirroring and versioning are common processes in backing up files on a scheduled basis. As described on page 8, line 34 to page 9, line 5 under the heading "Continuous Protection", and on page 31, line 22 to page 32, line 5, applicants' novelty lies in the process of backing up files **each time one of the files is updated**, i.e. changed, rather than at regular intervals dictated by a time schedule.

Claim 9 is mapped to the specification below:

9. A method for backing up data stored in files as the data is updated, the method comprising:

updating one of the files; (page 27, line 21--"**Each time a change is made**")

temporarily storing a copy of the updated file; (mirroring); (page 27, line 19--"**the invention stores a copy of the current version**" and page 30, line 28--"**Mirroring is a process of maintaining an identical copy ...**")

comparing the copy of the updated file with the file prior to updating; (it is inherent that a comparison must be made in order to create the differences recited in the next step)

storing the differences in the copy of the updated file (versioning); (page 27, line 24--  
**"the invention stores only the changes"); and**

repeating the foregoing steps each time one of the files is updated (page 27, line 21--  
**"Each time a change is made").**

**6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The sole issue in this appeal is whether the claimed invention would have been obvious to one of ordinary skill in the art under 35 USC 103(b) from the Uemura and Dunn references of record.

**7. ARGUMENT**

Claims 9 to 13 stand rejected under 35 USC 103(b) as obvious from the Uemura and Dunn references of record. All the claims stand or fall together. It is proposed that the Board select claim 9 and decide this appeal on the basis of that claim. The remaining claims on appeal are all directly or indirectly dependent on claim 9.

The examiner has rejected claim 9 as obvious from the Uemura and Dunn references of record. He concedes that Uemura does not disclose the step of "storing a copy of the updated file and storing the differences in such copy each time one of the files is updated (emphasis added)". However, referring to Dunn's Abstract, the examiner takes the position it would be obvious from the teachings of Dunn to perform the claimed storing steps **each time one of the files is updated**. This interpretation of Dunn flies in the face of the expressed language of his disclosure, including his Abstract, which talks about **periodic** data dumps and other data handling activities **at regular intervals**. This is the antithesis of backing up each time the files

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are updated. Nowhere does Dunn suggest backing up data each time the data is updated as set forth in Claim 9.

**8. CONCLUSION**

Accordingly, the rejection of claims 9-13 is without basis and should be reversed.

**9. CLAIM APPENDIX**

9. A method for backing up data stored in files as the data is updated, the method comprising:

- updating one of the files;
- temporarily storing a copy of the updated file (mirroring);
- comparing the copy of the updated file with the file prior to updating;
- storing the differences in the copy of the updated file (versioning); and
- repeating the foregoing steps each time one of the files is updated.

10. The method of claim 9, additionally comprising restoring one of the files to a previous condition by:

- temporarily storing a copy of the current version of the file being restored;
- applying the stored differences to the stored copy of the current version to produce a copy of an earlier version of the file being restored, and
- repeating the two recited steps until a desired version of the file is produced.

11. The method of claim 10, in which the temporarily stored copy is stored until the next time one of the files is updated.

12. The method of claim 9, in which the temporarily stored copy is stored until the next time one of the files is updated.

13. The method of claim 9, additionally comprising restoring one of the files to a previous condition by:

- applying the stored differences to the updated file to produce a copy of a later version of the file being restored; and
- repeating the recited step until a desired version of the file is produced.

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**12. EVIDENCE APPENDIX**

Appellant is not relying on any evidence.

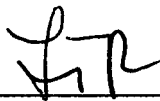
**Application No. 10/027,700**

**13. RELATED PROCEEDING APPENDIX**

See attached Notice of Panel Decision from Pre-Appeal Brief Review mailed August 25, 2005 which is attached hereto as an Appendix.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By  \_\_\_\_\_  
LeRoy T. Rahn  
Reg. No. 20,356  
626/795-9900

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Attachment: Notice of Panel Decision

AMB PAS688332.2-\*05/31/07 10:51 AM



## **APPENDIX**

## **APPENDIX**

<b>Application Number</b> 	<b>Application/Control No.</b> 10/027,700	<b>Claim(s)/Patent under Reexamination</b> SKIBA ET AL.	
	Matthew M. Kim	<b>Art Unit</b> 2186	
<b>Document Code - AP.PRE.DEC</b>			

## Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed 08/17/05.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☐ Other: \_\_\_\_\_

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☐ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

☐ The panel has determined the status of the claim(s) is as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☒ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time. ✓

All participants:

(1) Matthew M. Kim

(2) Tuan Thai *TH*

(3) \_\_\_\_\_

(4) \_\_\_\_\_